

1 James J. Pisanelli, Bar No. 4027
2 Debra L. Spinelli, Bar No. 9695
3 M. Magali Mercera, Bar No. 11742
PISANELLI BICE PLLC
4 400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101
5 Email: jjp@pisanellibice.com
Email: dls@pisanellibice.com
6 Email: mmm@pisanellibice.com

7 Jonathan D. Polkes (admitted pro hac vice)
Stephen A. Radin (admitted pro hac vice)
8 Caroline Hickey Zalka (admitted pro hac vice)
WEIL, GOTSHAL & MANGES LLP
9 767 Fifth Avenue
New York, New York 10153
10 Telephone: 212.310.8770
Facsimile: 212.310.8007
11 Email: jonathan.polkes@weil.com
Email: stephen.radin@weil.com
12 Email: caroline.zalka@weil.com

13 Attorneys for Defendants Georges Antoun,
14 Kevin DeNuccio, Sarita James, Jay Leupp,
15 Merrick D. Okamoto, Said Ouissal, Simeon
Salzman, and Fred Thiel, and Nominal Defendant
Marathon Digital Holdings, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

18 KIMBERLY BERNARD, Derivatively on Behalf of
19 MARATHON DIGITAL HOLDINGS, INC. (f/k/a
MARATHON PATENT GROUP, INC.),

Case No.: 2:22-cv-00305-RFB-VCF

20 Plaintiff,
v.

21 FRED THIEL, GEORGES ANTOUN, KEVIN
22 DENUCCIO, SARITA JAMES, JAY LEUPP,
23 SAID OUISSAL, MERRICK D. OKAMOTO, and
SIMEON SALZMAN,

24 Defendants,
-and-

MARATHON DIGITAL HOLDINGS, INC. (f/k/a
MARATHON PATENT GROUP, INC.).

27 || Nominal Defendant.

**DECLARATION OF STEPHEN A.
RADIN OPPOSING MOTION TO
INDEFINITELY STAY
DEADLINES TO RESPOND TO
MOTIONS TO DISMISS**

1 ROY STRASSMAN, Derivatively on Behalf of
 2 MARATHON DIGITAL HOLDINGS, INC. (f/k/a
 3 MARATHON PATENT GROUP, INC.),

4 v.
 5 Plaintiff,

6 FRED THIEL, GEORGES ANTOUN, KEVIN
 7 DENUCCIO, SARITA JAMES, JAY LEUPP,
 8 SAID OUISSAL, MERRICK D. OKAMOTO, and
 9 SIMEON SALZMAN,

10 Defendants,

11 -and-

12 MARATHON DIGITAL HOLDINGS, INC. (f/k/a
 13 MARATHON PATENT GROUP, INC.),

14 Nominal Defendant.

15 Case No.: 2:22-cv-00724-ART-EJY

16 I, Stephen A. Radin, declare the following:

17 1. I am a member of the law firm Weil, Gotshal & Manges, counsel for Defendants
 18 Georges Antoun, Kevin DeNuccio, Sarita James, Jay Leupp, Merrick D. Okamoto, Said Ouissal,
 19 Simeon Salzman, and Fred Thiel and Nominal Defendant Marathon Digital Holdings, Inc. in the
 20 above-captioned *Bernard* action and the above-captioned *Strassman* action. I have been admitted
 21 to practice before this Court *pro hac vice* in both actions.

22 2. I submit this declaration in opposition to the motions by plaintiffs in the above-
 23 captioned actions seeking, among other things, to stay briefing of motions to dismiss for an
 24 indefinite period of time. *Bernard* ECF Nos. 34, 35, and 36, *Strassman* ECF Nos. 19, 20. Neither
 25 Defendants nor Marathon oppose plaintiffs' other requested relief.

26 3. On May 17, 2022, I sent an email to Mark C. Rifkin of the firm Wolf Haldenstein
 27 Adler Freeman & Herz LLP, plaintiffs' counsel in the *Strassman* action, proposing briefing the
 28 motion to dismiss the *Strassman* action on the same schedule that the Court ordered on April 18,
 2022 in the *Bernard* action. I wrote that, if that did not work for Mr. Rifkin, I would be “[h]appy
 to accommodate any reasonable request.” A true and correct copy of this email is attached as
 Exhibit A.

1 4. On May 18, 2022, Mr. Rifkin informed me by telephone that plaintiffs in the
2 *Bernard* and *Strassman* actions intended to move to consolidate the cases and file a consolidated
3 complaint before briefing the pending motions to dismiss. I offered to stipulate to consolidation
4 and asked Mr. Rifkin to propose a date for the filing of the consolidated complaint. I reiterated
5 what I stated in my May 17, 2022 email: that I was “[h]appy to accommodate any reasonable
6 request.” Mr. Rifkin declined to propose a date. He stated that he would discuss the matter with
7 counsel in the *Bernard* action and call me back.

8 5. I heard nothing further from Mr. Rifkin until May 23, 2022, when, rather than
9 calling me back, plaintiffs filed the motions now before the Court.

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct based upon my knowledge, information, and belief.

12 | Executed on: May 27, 2022

/s/ Stephen A. Radin
Stephen A. Radin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 27th day of May 2022, I caused to be served via the Court's CM/ECF program true and correct copies of the above and foregoing **DECLARATION OF STEPHEN A. RADIN OPPOSING MOTION TO INDEFINITELY STAY DEADLINES TO RESPOND TO MOTIONS TO DISMISS** to all parties via electronic service.

/s/ Cinda Towne

An employee of PISANELLI BICE PLLC

EXHIBIT A

May 17, 2022 Email from
Stephen Radin to Mark Rifkin

Radin, Stephen

From: Radin, Stephen
Sent: Tuesday, May 17, 2022 10:21 AM
To: 'rifkin@whafh.com'
Subject: Marathon Derivative Action

Mark:

I think we had a matter together years ago – maybe Westinghouse or CBS?

I'm writing about Marathon. As you know, we've moved to dismiss your action (Strassman, Case No. 00724) on the same grounds Marathon moved on April 4 to dismiss the previously filed action (Bernard, Case No. 00305). The default schedule in Nevada is two weeks for your answer to the motion, May 24, and the opposition to the motion in Bernard, filed on April 4, is due on May 31. I assume you are working with the plaintiff in Bernard, since the complaints in the two cases are identical. Would it work for you to oppose our motion on the same schedule, i.e., on May 31? Happy to accommodate any reasonable request.

Best,
Steve

Weil

Stephen A. Radin

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8770
Facsimile: (212) 310-8007
E-Mail: stephen.radin@weil.com